IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.10.2007

CORAM

THE HON'BLE MRS.JUSTICE PRABHA SRIDEVAN

W.P.No.32497 of 2004
W.P.M.P.No.39369 of 2004
and W.V.M.P.No.1826 of 2006

Srenevassa Theatre
rep. by its Proprietor
R.Venkatanarayanan
174, 5th North Street,
Mariappa Nagar,
Annamalai Nagar,
Chidambaram. ... Petitioner

Vs.

The District Collector of Cuddalore
Cuddalore. ... Respondent

Petition filed under Article 226 of the Constitution of India, praying for a writ of certiorarified mandamus, calling for the records comprised in the proceedings of the respondent in his Na.Ka.No.C1/44429/99, dated 29.10.2004 and quash the proceedings dated 29.10.2004 and consequently direct the respondent herein to sanction the structural modification of the petitioner theatre.

For Petitioner : Mr.V.Ramajegadeesan
For Respondent : Mr.K.Balakrishnan, AGP

O R D E R

By consent, the main writ petition has been argued. The writ petitioner is a cinema theatre. It appears that it was not making profit and therefore, a portion of the theatre premises was carved out and shopping complex was put up on the western side. The petitioner states that an application was made to the respondent, who is the licensing authority on 27.05.1999 for approval of the alteration. There was a delay in disposing of the said application. Therefore, a writ petition was filed in W.P.No.12652 of 2001 for consideration of the application. On 10.03.2004, the above writ petition was disposed of with a direction to the respondents to consider and pass orders. So far, the respondent has not passed orders. On 25.05.2004, the respondent served a notice on the petitioner, directing the petitioner to explain why the car parking facility is not adequate, and also regarding the floor-space-index on the four sides of the theatre and some suggestion was received with regard to the placement of the ticket counter.

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2. According to the petitioner, these suggestions were carried out and a revised plan was also submitted. Thereafter the respondent has issued the impugned order on 29.10.2004 in Na.Ka.No.C1/44429/99, directing the petitioner to demolish the ticket counter and to provide for necessary car parking outside the theatre premises. Against that, this writ petition has been filed.

3. According to the learned counsel for the petitioner, the Tahsildar, Sub Collector and the Superintending Engineer, PWD have given a favourable report and yet the modifications in construction made by the petitioner have not been sanctioned. According to the learned counsel for the petitioner, the District Collector cannot depute other officials to file a report, contrary to the earlier favourable reports.

4. At the time of admission, interim stay was granted, only with regard to penal action and yet till date, the petitioner has not complied with the instruction given in the impugned order. The impugned order reads as follows :

"சிதம்பரம் வட்டம் சி.கொத்தங்குடி கிராமத்தில் இயங்கி வரும் சீனிவாசா திரையரங்கினில் முன் அனுமதி பெறாமல் வணிக வளாகம் கட்டியதைத் தொடர்ந்து பார்வை 1ல் கண்டுள்ள கடிதத்தில் விளக்கம் கோரப்பட்டது. திரையரங்கு உரிமையாளர் விளக்கக் கடிதத்தினை பெற்றுக் கொண்டு தனது விளக்கத்தினை பார்வை 2ல் காணும் கடிதத்தில் தெரிவித்துள்ளார். அதில் தான் திரைப்பட விதிகளை மீறவில்லை என்றும், அலுவலகப் பதிவேடுகளை சரியாக ஆய்வு செய்யாமல் தனக்கு விளக்கம் கோரும் நோட்டீஸ் கொடுக்கப்பட்டுள்ளது என்றும் எனவே அதனை தள்ளுபடி செய்யும்படி கோரியுள்ளார்.

2) திரையரங்கு உரிமையாளரை நேரடியாக விசாரணை செய்யும் பொருட்டு பார்வை 3ல் காணும் குறிப்பானை வழங்கப்பட்டது. திரையரங்கு உரிமையாளர் 31.05.2004 அன்று மாவட்ட ஆட்சியரிடம் நேரடியாக ஆஜராகி தனது விளக்கத்தினை தெரிவித்துள்ளார். அதில் திரையரங்கு வளாகத்தில் வாகனங்களை மிகவும் சவுகரியமாக நிறுத்த இயலும் என்றும் திரையரங்கினில் சுற்றி மூன்று புறமும் (கிழக்கு, தெற்கு, வடக்கு) குறைந்தபட்சம் 6.10 மீட்டரும் அதிகமாக இடைவெளி உள்ளது என்றும் மேற்கு பகுதியில் 3.05 மீட்டருக்கும் அதிகமாக இடைவெளி உள்ளது என்றும் தெரிவித்தார்.

3. கடலூர் பொதுப்பணித்துறை செயற்பொறியாளர் கடித எண் 332/எம்/2004 இநிவ/3/கோ/595 நாள் 06.07–2004 தேதி கடிதத்தில் மேற்படி திரையரங்கின் மூன்று பகுதிகளிலும் குறைந்தபட்ச தேவையான 6.10 மீட்டர் இடவசதி இல்லை என்று தெரிவித்துள்ளார்.

4. மேற்படி திரையரங்கு மாவட்ட ஆட்சியரால் புலப்பார்வை செய்யப்பட்டது. திரையரங்கின் முன்பகுதியில் உள்ள காலியிடம் வாகனங்களை நிறுத்த போதுமானது அல்ல. எனவே அதே நலையில் திரையரங்கினை தொடர்ந்து நடத்திட விதி முறைகளில் வழி இல்லை. மேலும் திரையரங்கின் தெற்கு பகுதியில் உள்ள டிக்கட் கவுண்டரை இடத்து எடுப்பதன் மூலம்

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திரையரங்கின் மூன்று பகுதிகளிலும் 3.05 மீட்டர் இடைவெளி கிடைக்கும்.

5. எனவே மேற்படி காரணங்களினால் திரையரங்கு உரிமையாளர் திரையரங்கின் தெற்கு பகுதியில் உள்ள டிக்கட் கவுண்டரை இடித்து அப்புறப்படுத்துவதன் மூலம் அந்த பகுதியில் 3.05 மீட்டர் இடைவெளி கிடைக்கும். இது தவிர வாகனங்களை நிறுத்துவதற்கு திரையரங்கிற்கு வெளியே தனியாக கூடதல் இடத்தினை பெற்று அதற்கான ஆவணங்களை திரையரங்கிற்கு வெளியே தனியாக கூடுதல் இடத்தினை பெற்று அதற்கான ஆவணங்களை 10.11.2004க்குள் ஒப்படைக்க வேண்டும். திரையரங்கு உரிமையாளர் 10.11.2004 க்குள் கூடுதல் வாகன நிறுத்துமிடம் திரையரங்கிற்கு வெளியில் ஏற்பாடு செய்து விட்டு அதன் விபரத்தினை காண்பிக்க வேண்டும் என்று தெரிவிக்கப்படுகிறது. தவறினால் தமிழ்நாடு சினிமா (ஒழுங்குமுறை) விதிகளின்படி உரிய தண்டனை நடவடிக்கை எடுக்கப்படும் என இறுதியாக தெரிவிக்கப்படுகிறது."

5. A detailed counter along with the reports has been filed. It is seen from that the Director of Town Planning had turned down the application of the petitioner for modification on the following grounds :

a) Rule 53 (1) of T.N.C.(R) Rules, 1975 not satisfied, as 6.1 metres open space has not been provided in 3 sides.

b) Vehicle parking space not provided

c) Public buildings Rules 9, 12 and 13 satisfied.

and therefore, the former Collector, Cuddalore had inspected the theatre on 29.09.1998 and rejected the petitioner's application. Thereafter, he again applied for permission on 24.06.1999 to exclude certain extent. In this regard, Rule 53(1) of T.N.C.(R) Rules, 1957 is relevant, which reads as follows :

> Rule 53(1) of T.N.C.(R) Rules, 1957 says.
> The building shall be provided on atleast three of its sides with an open space of not less than 6.10 metres in width or such greater width as may be required by licensing authority for parking the number of cars which would be normally attracted and for the purpose of the free movement of persons and for facilitating rescue operations in time of emergency. Provided that in the case of a building where the licensee has provided adequate parking space for cars either in the basement or ground floor over which the auditorium is located, or in the vicinity of the building, acceptable to the licensing authority, there shall be an open space of not less than 3.05 metres on all sides of the building except on the rear side, for the free movement of persons and to facilitate rescue operations in times of emergency.

6. This open space on three sides is necessary for free movement of the theater goers and to facilitate rescue operation in times of emergency. The licensee shall provide adequate parking space in the basement of the ground floor or in the vicinity in the building. After

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scrutinizing the proposal submitted by the licensee, the Superintending Engineer, PWD had reported that the open space available, after alteration would be adequate if the proposed modification satisfy the rules. The detailed report of the Superintending Engineer is also available. It is in these circumstances that the Assistant Director of Survey and Land Regulations was instructed to inspect the theatre premises. The report of the said officer reads as follows :

> The theatre premises has been surveyed as per the plan countersigned by the Superintending Engineer, Planning Designs and Circle, Chennai. There is some variation in measurement in the Northern side. In this side, the licensee encroached in Road poramboke by way of cement platform about 1.9 metre breadth of area .The remaining measurements in the plan have agree with the actual measurement.
>
> In the western side of the premises, the measurements relating to the area proposed to be separated from the originally approved plan of 563.21 Sq.metres are found to be correct. Further, in the western side, the measurement 3.20 metres as per plan agrees with the actual measurement.

7. The then Collector, inspected the theatre on 04.09.2001 and directed the Executive Engineer (PWD) Buildings and Assistant Director (Survey & Land Records) to examine the proposal of the petitioner. The Assistant Collector, Chidambaram, who was also requested to inspect the theatre has sent his report, in his Office Ref.K.Dis.A3/5783/03, dated 09.12.2003, after inspecting the theatre on 28.10.2003 as follows:

> The total area having existing carpet area of theatre is 2400 sq.metres (including shopping complex and threatre built area). The shopping complex were now constructed in the area of 345 sq.metre, consisting nine shops which were functioning. The licensee has not obtained prior permission from the licensing authority for the construction of shopping complex.
>
> On the south-west side of the backyard of the theatre, the licensee had constructed a new generator room without obtaining prior permission from the licensing authority. In this place also, he has sold the land for a shopping complex without getting prior approval. Hence, 6.10 metre or more breadth on the three sides are not available for movement of traffic flow, car parking, two wheeler, cycle parking as per rules laid down in 53(1) of Tamil Nadu Cinemas (Regularion) Rules, 1957.
>
> The licensee has evicted the encroachments by means of some permanent construction and fencing in Government poramboke on the east west direction.
>
> The licensee has deleted certain area (in 345 Sq.metre) in the western side of the theatre premises and

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constructed the shopping complex and also making certain alterations in structures in the existing theatre. Hence, there is no sufficient space available as per Rule 53(1) of TNC (R) Rules, 1957. Therefore, he has recommended that necessary action may be taken against the licensee Srinivasa Theatre, Chidambaram."

8. The District Revenue Officer, Cuddalore has inspected the theatre and his report reads as follows :

"The theatre is situated in Survey No.154 of C. Konthankudi village. The Gap between the compound wall of the theatre and the building wall of the theatre on the western side is 3.2, 5.6, 3.3, 3.2 meters etc in difference places. Without obtaining prior permission of the licensing authority (i.e.) District other side of the area has been converted as shopping complex. The intervening area is very narrow and if an accident takes place in the theatre, the main members would suddenly rush through this area for rescue. Since the area is very narrow, there is likelihood of stampede and chances are more for casualties. The front area i.e. northern side of the theatre, vacani space measurement is 9.8 metre only. The old cycle stand that has been placed earlier in the western side area, now has been shifted to the Portico of the theatre. During the time of inspection, it was happened to see that more number of cycles were standing before the portico just close to the step of the theatre. Car parking, two wheeler parking, cycle parking etc. have to be placed before the portico area and in point of view this will cause inconvenience to the film viewers. Therefore, for the irregularities as mentioned above, it is not advisable to approve the alignment in the western direction of the theatre area. The licensee may be issued A SHOW CAUSE NOTICE for having constructed the shopping complex without permission of the licensing authority and thereby caused inconvenience to the Film viewers and thereafter action may be taken against the licensee as per Rules and regulations."

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9. Based on the inspection notice of the District Revenue Officer, show cause notice was issued to the petitioner. He submitted his explanation at that time, that he had filed a writ petition for a mandamus to the District Collector to pass orders on his application, dated 27.05.1999.

10. According to the respondent, the petitioner had violated the rules under the Tamil Nadu Cinemas (Regulation) Rules, 1957, (1) by converting the are at the western side of the wall as chopping complex without obtaining prior permission (Rule 77 of the said Rule). (2) By not providing sufficient space for parking facility (Rule 53(1) of the said Rule) and (3) Construction of new generator room on the south west side of

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the backyard of the theatre without obtaining prior permission (Rule 77 of the said Rule). It is in these circumstances, show cause notice was issued for the three violation.

11. According to the respondent, it is not correct that the respondent had ignored the favourable report submitted by the other officers. According to the respondent, all the officers had sent their remarks stating to what extent the petitioner's request could be considered by making suitable arrangement of the existing structure. The earlier report have also been enclosed along with the counter and it is seen from that it is not correct to say that the Superintending Engineer has given a favourable report. It has been ignored by the present Collector, because the report itself states that the side open spaces have been scrutnised, based on the measurements furnished by the licensee and it is subject to the correctness of the said measurement and it is also clear from the said report that after the modifications are made by the petitioner, inspection should be done to see if the modifications have been carried out in accordance with the rules. The general guidelines for following during the construction of the proposed modification works was enclosed as an annexure.

12. The Assistant Director (Survey and Records) has also filed his report. The notes of the inspection of the then Collector, Cuddalore on 04.09.2001 reads as follows:

> "During my inspection, I find that the parking of motor vehicles behind the theatre premises, there is no adequate space available. On the south west side of the backyard of the theatre, the licencee has constructed a new generator room violating the indication shown in the map. As per plan submitted this generator room has to be constructed on the south east portion. This deviation has been noticed during my inspection and the licencee has not obtained prior permission.
>
> The Licencee 's request has been previously rejected by the licensing authorities as per rule 53(1) of TNC(R) Rules as the licencee has not satisfied the rules. The licencee has proposed to remove the existing toilets on the southern side and to construct the same adjacent to the existing building backyard of the cinema house. Parking slot seems to be inadequate.
>
> E.E. (PWD), Buildings, Assistant Director (Survey & Land Records) should examine the matter and the availability of space for car parking and two wheelers / cycles parking and send me a report over the space in question to decide the issue early.
>
> The licencee has also encroached upon some space in Government poramboke on east west direction by means of some permanent construction and fencing. The encroachments have to be removed."

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13. The inspection report of the Assistant Collector, Chidambaram has also been enclosed and it is seen from that, the Inspection is done in the presence of the Manager of the theatre and it reads as follows :

> "At the time of inspection of the Srinivasa Theatre, Chidambaram the Manager of the Theatre was present.
>
> The total area having existing carpet area of theatre is 2400 sq. metre., (including shopping complex and theatre built area) The shopping complex were now constructed in the area of 345 Sq.metre., consisting nine shops were functioning. The Licence has not obtained prior permission from the Licensing authority for the construction of shopping complex.
>
> On the south west side of the backyard of the theatre the licensee has constructed a new generator room without obtained prior permission from the Licensing authority. In this place also he has sold the land for approval. Hence there is a 6.10 metre., or more breath on the three sides are not available for movement of traffic flow, car parking, two wheeler, cycle parking as per rules laid down in 53(1) of Tamil Nadu Cinema (Regulation) Rules 1957.
>
> The Licensee have evicted the encroachment by means of some permanent construction and fencing in Government poramboke on the west direction on the points noticed by the former Collector's inspection dated 04.09.2001.
>
> The Licensee had made deleted certain area in 345 sq.metre., the western side of the theatre premises and constructed the structures in the existing theartre. Hence there is no sufficient space available as per Rule 53(1) of TNC(R) Rules 1957. Therefore I request that necessary action may be then against the licence, Srinivasa Theatre, Chidambaram. I enclose the notes of my inspection and sketch showing the vacant site. Commercial complex and Cinema theatre presently built up area."

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14. It is in these circumstances that the impugned order has been issued. The authorities are bound in duty to ensure that the safety regulations with regard to construction of theatre are not violated by the theatre owners. It is on account of unscrupulous violation and disregard of the statutory rules that tragic accidents occur in theatre, and even in an emergency the cinema goers are unable to be evacuated safety. In this background, if the respondent wants to ensure that the petitioner theatre premises shall adhere to the regulations, this Court will not and cannot interfere. All the reports enclosed along with the counter would show that the inspection has been done meticulously by various officers and it is thereafter the impugned order has been passed. I see no reason to interfere. This writ petition is dismissed. No costs. Consequently, connected W.P.M.P.No.39368 of 2004 and W.V.M.P.No.1826 of 2006 is also dismissed.

Sd/
Asst.Registrar

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Sub Asst.Registrar

tsvn

To

The District Collector of Cuddalore
Cuddalore.

1 cc To Mr.V.Ramajegadeesan, Advocate, SR.64605.
1 cc To The Government Pleader, SR.64349.

W.P.No.32497 of 2004

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